

**CABLE FRANCHISE AGREEMENT
CITY OF BLOOMINGTON, MINNESOTA**

February 16, 1999

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FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter the "Agreement"), made and entered into this sixteenth day of February, 1999, by and between the City of Bloomington, a municipal corporation of the State of Minnesota (hereinafter the "City" or "Grantor"), and Nortel Cable Associates, L.P. by and through its General Partner, Nortel Cable Corporation, both d.b.a. Paragon Cable (hereinafter the "Grantee").

WITNESSETH

WHEREAS, pursuant to Ordinance No. 99-2 (the "Ordinance"), the City is authorized to grant one or more nonexclusive revocable Franchises to operate, construct, and maintain a cable television system within the City; and

WHEREAS, the City, after due evaluation of the Grantee's technical ability, financial condition and legal qualifications, and after public hearings, has determined that it is in the best interest of the City and its residents to grant a Franchise to Grantee.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.

GENERAL PROVISIONS

1.1 Definitions.

Capitalized terms used in this Agreement shall be defined as set forth in the Ordinance unless (i) otherwise defined herein, or (ii) the context otherwise requires.

1.2 Written Notice.

All notices, reports or demands required or permitted to be given under this Agreement and/or the Ordinance shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City: City Manager

City Hall
2215 West Old Shakopee Road
Bloomington, MN 55431-3096

If to Grantee: Division President
Paragon Cable
801 Plymouth Avenue North
Minneapolis, MN 55411

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

SECTION 2.

GRANT OF FRANCHISE

2.1 Grant.

This Franchise is hereby granted in accordance with the provisions of the Ordinance, subject to the terms and conditions of this Agreement. The Franchise, hereby provides Grantee with the authority, right and privilege to construct, reconstruct, operate and maintain a cable television System within the Franchise Area.

2.2 Right of Grantor to Issue Franchise.

Grantee acknowledges and accepts the right of Grantor to issue the Franchise and Grantee agrees that it shall not now or at any time hereafter challenge any lawful exercise of this right by Grantor in any local, State or Federal court.

2.3 Effective Date.

The grant of the Franchise provided for in this Agreement shall be effective on the date that both parties have executed this Agreement (the "Effective Date"), provided that said date is no later than thirty (30) days after the date the City Council approves this Agreement (the "Approval Date"). The grant of the Franchise provided for in this Agreement is further contingent upon the filing by Grantee with the City Clerk of the City, of this Agreement duly executed by Grantee together with the security fund and insurance certificates provided for in this Agreement and the Ordinance, except that if such filing does not occur within thirty (30) days after the Approval Date, the Grantor may, in its sole discretion, declare the grant of the Franchise provided for herein to be null and void.

2.4 Term.

The term of the Franchise granted pursuant to this Agreement shall be fifteen (15) years and shall commence on the Effective Date and shall expire fifteen (15) years thereafter, at which time it shall be of no force or effect unless the Franchise is then renewed in accordance with the Ordinance and Applicable Laws.

- A. Subject to the provisions of this Section 2.4, the Grantor may amend the Ordinance so as to require the Franchisee to upgrade the Cable System to incorporate the State of Art (the “State of the Art Option”).
- B. The Grantor may not initiate the State of the Art Option or issue an order as defined at paragraph (D) below at a time when the Grantee is subject to effective competition as defined from time to time by federal law.
- C. In order to initiate the State of the Art Option, the Grantor shall first commence a review of the Cable System. There shall not be more than one (1) such review every two (2) calendar years. A review may not commence prior to the seventh (7th) or after the twelfth (12th) anniversary of the Effective Date.
 - 1. The review described in this paragraph (C) shall, at a minimum, take into account the following:
 - a. characteristics of the existing Cable System;
 - b. the State of the Art;
 - c. the additional benefits provided to customers by the State of the Art;
 - d. the marketplace demand for the State of the Art taking into account any associated rate increase; and
 - e. any additional factors deemed relevant by the Grantor or the Grantee.
 - 2. If, after conducting such a review, the Grantor determines that the exercise of the State of the Art Option may be warranted, the Grantor shall hold at least two (2) public hearings to enable the general public and the Grantee to comment and present additional evidence.
- D. If, following such hearings, the Grantor determines that the exercise of the State of Art Option is warranted, it may order the State of the Art be implemented (“the Order”). The Order shall be in writing and shall set forth the basis for the Grantor decision. Upon agreement, the parties may amend this Franchise accordingly. If however, the Grantee is not willing to comply with such Order, the Grantee may, within sixty (60) days after the City’s Order:
 - 1. Appeal the Grantor’s Order to any court of competent jurisdiction; or

2. Notify the Grantor pursuant to Section 626 of the Cable Act, that it wishes to commence proceedings to review the Franchise. Such notice shall be deemed to shorten the term of the Franchise such that the Franchise will expire thirty-six (36) months from the date of the Grantee's notice. The Grantee shall not be deemed to be in violation of the Order or of the Franchise if such renewal proceedings are commenced.
- E. If the court finds that the Grantee has demonstrated the Grantor Order is not supported by a preponderance of the evidence based on the record of the proceedings from (C) above, the court shall grant appropriate relief.
- F. For the purposes of this Section 2.4 the term State of the Art shall mean equipment that:
1. is readily available with reasonable delivery schedules from two (2) or more sources of supply;
 2. has the capability to perform the intended functions demonstrated within communities with similar characteristics (including, but not necessarily limited to population, density, subscriber penetration, etc.) under operating conditions for purposes other than test or experimentation; and
 3. can be implemented by the Grantee in a economically feasible manner taking into account economic waste (i.e., early retirement of assets) and the reasonable likelihood of generating a reasonable return on the Grantee's investment when measured over the then remaining term of the franchise.

The term "State of the Art" does not include equipment and/or facilities associated with public, educational or government access.

2.5 Franchise Not Exclusive.

- A. Additional Franchises. The City shall not grant a Franchise to another Grantee to operate a Cable System on terms and conditions which are less burdensome or more favorable than the terms and conditions of this Agreement unless required to do so by state or federal law.
- B. Competition. If another Multichannel Video Programming Distributor operates in the City's Streets and rights-of-way without City authorization, either in the form of a Franchise Agreement or other legally required authorization, and the City has clear and express authority under Applicable Laws to mandate a Franchise Agreement or other legally required authorization on that Multichannel Video Programming Distributor but fails to do so, then Grantee shall not be required to comply with those terms of this Franchise Agreement or the Ordinance which are

not also imposed upon the Multichannel Video Programming Distributor. By way of example, assume an entity elects to provide cable service via an “Open Video System (OVS)” and the City requires this OVS operator to obtain authorization from the City to the maximum extent allowed by Applicable Laws. Thus, the City mandates terms and conditions substantially the same as those applied to Grantee, but the City is preempted by Applicable Laws from mandating certain terms and conditions which may apply to Grantee. In this case, Grantee will not be relieved of those terms and conditions which are not being applied to the OVS operator because the City is preempted from mandating such terms and conditions under Applicable Laws.

- C. Actions by the City as a Competitor. If the City makes a decision to commence construction and operation of a Cable System in the City, or should construction of a Cable System by the City commence without an identifiable final decision, then Grantee may seek modification of this Agreement as of the date of the final decision to commence construction and operation, or at the commencement of construction if it begins without an identifiable final decision, in the manner described below:
1. Notwithstanding any provision to the contrary contained in this Agreement or the Ordinance, Grantee shall not be required to provide the City with proprietary information or to respond to requests for information that require it to release proprietary information where it reasonably believes that the release of such information would provide the City a competitive advantage, except as required by Applicable Laws;
 2. Any audits of Franchise Fees must be conducted by an independent auditor who has agreed in advance in writing not to disclose any portion of Grantee's books and records or other proprietary information to the City, other than the aggregate amount of Gross Revenues (without disclosing the amounts of underlying categories of Gross Revenues) used to calculate the Franchise Fees payable hereunder; and
 3. If Grantee shall be required to move, relay, or relocate any of its facilities in connection with the construction or preparation for construction of a Cable System by the City (regardless of whether any such removal, relaying, or relocation is required under the terms of this Agreement, the Ordinance, or under any applicable pole attachment agreement to which Grantee and the City are parties), then the City shall be obligated to pay all of Grantee's reasonable costs for labor and materials to effect such work.

If the City and Grantee cannot mutually agree on appropriate modifications to this Agreement as outlined above, Grantee may seek resolution of such matter in a court of competent jurisdiction.

2.6 Conflict with Cable Ordinance.

The provisions of the Ordinance are hereby incorporated herein by reference as if set out herein in full, and form part of the terms and conditions of this Agreement. In event of any conflict between the terms and conditions of this Agreement and the provisions of the Ordinance, the provisions of the Ordinance shall control.

2.7 Ownership of Grantee.

Grantee represents and warrants to Grantor that the names of the shareholders, partners, members or other equity owners of the Grantee are as set forth in Exhibit A hereto.

SECTION 3.

GENERAL REQUIREMENTS

3.1 Governing Requirements.

Grantee shall comply with all lawful requirements of this Agreement, the Ordinance and Applicable Laws. Grantee shall at all times comply with the requirements on use of Grantor's Rights-of-Way set forth in City Ordinance sections 17.64-17.87 and any amendments thereto. Grantee shall be exempt from any fees or other costs required pursuant to sections 17.64-17.87.

3.2 Franchise Fee.

In consideration of the grant of the Franchise provided for herein, the Grantee shall, at all times during the term of this Agreement, pay to Grantor a Franchise Fee of five percent (5%) of Grantee's Gross Revenues. The Franchise Fee shall be payable quarterly within thirty (30) days of the expiration of the preceding calendar quarter. Each payment shall be accompanied by a report in such form as the City may reasonably request showing the computation of the Franchise Fee for the preceding calendar quarter and such other relevant facts as may be required by the City, including the completion of a Franchise Fee Payment Worksheet in the form attached hereto as Exhibit B.

3.3 Not Franchise Fees.

- A. Grantee acknowledges and agrees that except for the Franchise Fee expressly provided for in Section 3.2 hereof, none of the payments or contributions to be made by, or the Services, equipment, facilities, support, resources or other activities to be provided or performed by Grantee at the direction of the City or otherwise pursuant to this Agreement, the Ordinance, or otherwise in connection with the construction, operation, maintenance or upgrade of the System (including

specifically, but not by way of limitation, such payments, contributions, Services, equipment, facilities, support, resources or other activities described in or provided for in this Agreement and the Exhibits hereto and/or in the Ordinance) shall be franchise fees chargeable against the Franchise Fees payable by Grantee to the City pursuant to Section 3.2 hereof.

- B. Grantee acknowledges and agrees that except for the Franchise Fees expressly provided for in Section 3.2 hereof, each of the payments and contributions to be made by, or the Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Agreement, the Ordinance or otherwise, are within the exclusions from the term “franchise fee” set forth in Section 622 of the Cable Act (47 U.S.C. § 542).
- C. Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to Section 3.2 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Agreement and/or the Ordinance, and that the Franchise Fees provided for in Section 3.2 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.
- D. Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to Grantor pursuant to this Agreement and/or the Ordinance shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City.
- E. Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to Grantor to this Agreement and/or the Ordinance, each of which shall be deemed to be separate and distinct obligations of the Grantee.
- F. A violation of this section 3.3 shall be deemed a material violation pursuant to section 20.43 of the Ordinance of section 3.9 hereof.

3.4 Liability Insurance.

- A. Notwithstanding the requirements of Section 20.40 of the Ordinance, upon the Effective Date, the Grantee shall, at its sole expense and in addition to all required insurance under Section 20.40 of the Ordinance, take out and maintain during the

term of this Agreement public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than “A-” that shall protect the Grantee from claims which may arise from operations under this Agreement, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee’s vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

1. The policy shall provide coverage on an “occurrence” basis.
2. The policy shall cover personal injury as well as bodily injury.
3. The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.
4. Broad form property damage liability shall be afforded.
5. Standard form of cross-liability shall be afforded.
6. An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the Grantor.
7. Grantee shall submit to Grantor documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.
8. Any deductible or self-insured retention must be disclosed to and approved by Grantor.

3.5 Indemnification.

- A. In addition to Grantee’s indemnification obligations under Section 20.39 of the Ordinance, Grantee shall indemnify, defend and hold Grantor, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee’s operations, the exercise of the Franchise granted pursuant to this Agreement, the breach by Grantee of its obligations under this Agreement or the Ordinance and/or the

activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

- B. The indemnification obligations of Grantee set for in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee. The City shall be named as an additional insured on said insurance.
- C. Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Agreement, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Agreement.
- D. The indemnification of Grantor by Grantee provided for in this Agreement shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Agreement, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- E. Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees. Grantor shall hold Grantee harmless for any damage resulting from the negligence or misconduct of the Grantor or its officials, boards, commissions, agents, or employees in utilizing any PEG access channels, equipment, or facilities and for any such negligence or misconduct by Grantor in connection with work performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.
- F. The Grantee's indemnification obligations under this Agreement shall survive the expiration, cancellation or termination of this Agreement.
- G. In order for the Grantor to assert its rights to be indemnified and held harmless, the Grantor must:
 - 1. Promptly notify Grantee of any claim or legal proceeding which gives rise to such right;
 - 2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and

3. Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

3.6 Grantee's Insurance.

Grantee shall not commence any Cable System construction work or permit any subcontractor to commence work until all insurance required under this Agreement and the Ordinance has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Agreement.

3.7 Workers' Compensation Insurance.

Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees and, in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws, and to fully indemnify the Grantor from and against any and all claims arising out of occurrences on the work. Grantee hereby indemnifies Grantor for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by Grantor as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the Grantor with a certificate of insurance indicating Workers' Compensation coverage on the Effective Date.

3.8 Security Fund.

- A. Within sixty (60) days of the Approval Date, Grantee shall establish and provide to Grantor a security fund, as security for the full and timely payment and performance by Grantee of all of its obligations under this Agreement and the Ordinance. The Grantee shall provide to the city a performance bond in the amount of Five Hundred Thousand Dollars (\$500,000) which shall be acceptable to the City Attorney. Such approval shall not be unreasonably withheld.
- B. The performance bond shall be maintained at the Five Hundred Thousand Dollar (\$500,000) level until the System construction provided for in Section 4.1 hereof is completed. Upon completion of the system upgrade, the performance bond shall be eliminated. Grantee shall provide a Twenty Five Thousand (\$25,000) letter of credit acceptable to the City, for the remainder of the term of the Agreement. Such approval shall not be unreasonably withheld.
- C. The security fund may be drawn upon by Grantor for those purposes specified in Section 3.9(d) hereof, in accordance with the procedures of Section 3.9, as the case may be, provided that Grantee has received written notice and thirty (30) days after receipt of such notice to cure any material violations or breaches prior to any assessment.

- D. Nothing herein shall be deemed a waiver of the normal permit and bonding requirements made of all contractors working within the City's rights-of-way.

3.9 Procedure for Enforcing Franchise Agreement.

- A. The procedures for enforcing violations or breaches of this Agreement and/or the Ordinance shall be consistent with the procedures set forth in the Ordinance. In the event of an alleged violation or breach of this Agreement and/or the Ordinance by Grantee, Grantor, by action of the City Clerk or a delegate, shall first give notice to Grantee of the violation or breach and demand that Grantee cure the same within a reasonable time, which shall not be less than ten (10) days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Agreement or the Ordinance and thirty (30) days in all other cases. If Grantee fails to cure the violation or breach to the Grantor's reasonable satisfaction within the time prescribed or if Grantee fails to commence corrective action within the time prescribed and diligently proceed to cure such violation or breach thereafter, the Grantee shall then be given a written notice of not less than fourteen (14) days of a public hearing to be held before the Council. Said notice shall specify the violations or breach alleged to have occurred.
- B. At the public hearing, the Council shall hear and consider all relevant evidence, and thereafter render findings and its decision.
- C. In the event the Council finds that Grantee has cured the violation or breach or has diligently commenced correction of such violation or breach, after notice thereof from Grantor and is diligently proceeding to fully remedy such violation or breach, or that no material violation or breach has occurred, the Council shall terminate the hearing and no penalty or other sanction shall be imposed against Grantee. In determining whether a violation or breach is material, Grantor shall take into consideration the reliability of the evidence of the violation or breach, the nature of the violation or breach and the damage, (if any) caused or likely to be cause thereby to the Grantor, the City's residents or Subscribers, whether the violation or breach was chronic, any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.
- D. In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner, has not diligently commenced correction of such violation or breach or has not diligently proceeded to fully remedy such violation or breach, the Council may terminate this Agreement or impose liquidated damages, assessable from the security fund, of up to Five Hundred Dollars (\$500) per day or per incident, for unexcused violations or breaches of the System upgrade and/or rebuild completion schedule provided in Section 4.1 herein, and up to Three Hundred Dollars (\$300) per day or per incident for all other violations or breaches of this Agreement and/or the

Ordinance, provided that all violations or breaches of a similar nature occurring at the same time shall be considered one (1) incident.

3.10 Reservation of Rights.

Grantor and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 4.

SYSTEM CONSTRUCTION

4.1 System Specifications.

Grantee shall take all necessary steps to upgrade the Cable System to an upper operating frequency of Seven Hundred Fifty Megahertz (750 MHz), of which 550 MHz shall be used for delivery of analog signals, such upgrade to be completed on or before March 31, 2000. The system upgrade will be scheduled to be completed in 1999, and the Grantee shall use its reasonable efforts to comply with that schedule. However, no penalty provisions will be assessed against the Grantee until after March 31, 2000, for failing to complete the system upgrade.

4.2 General Requirements.

Grantee shall employ equipment used in high-quality, reliable, modern Cable Systems of similar design. Within 90 days after the Effective Date, Grantee shall provide to the City a plan for upgrading the current System indicating, at least, a general overview of the construction schedule.

4.3 General Description.

The upgrade shall provide Subscribers with a technically advanced and reliable Cable System. The System shall operate with 750 MHz of bandwidth with 550 MHz used for delivery of analog signals and the remaining 200 MHz reserved for future use. It will have a return capacity of 5-30 MHz. A purpose of this upgrade, in addition to increasing the technical capabilities and reliability of the System, is to provide the capacity for increased channels of video programming available to Subscribers. Grantee will upgrade the existing system to an upper operating frequency of 750 MHz on or before March 31, 2000. No additional equipment, labor or other activities will be needed to activate the additional 200 MHz in the rebuilt system (550 MHz to 750 MHz). Grantee agrees to launch cable modems in Bloomington at the same time it launches such service in the Minnesota systems it owns as of the effective date of this agreement, thereby activating the remaining 200 MHz of the system, for a total of 750 MHz.

4.4 Institutional Network.

Throughout the term of this Agreement, Grantee shall maintain the existing Institutional Network. Grantor shall be entitled to offset against the Access Operating Support fee required pursuant to Exhibit D paragraph 6 of this Agreement, Grantee's Institutional Network Maintenance costs. In 1999, Grantee estimates that the cost for Institutional Network maintenance will be approximately \$.07 (7 cents) per month per directly billed customer. Upon request, Grantee will provide to Grantor an accounting, within sixty (60) days of the end of the calendar year, describing Grantee's Institutional Network maintenance costs so that the City can verify the accuracy of any offset against the Access operating Support fee. In the event Grantor determines that the Institutional Network is no longer necessary, Grantee shall be relieved of any obligation to maintain the Institutional Network and Grantee shall no longer offset its Institutional Network maintenance costs from the Access Operating Support fee.

4.5 Design.

The design of the System shall be based upon a "Fiber to the Feeder" architecture. This architecture will deliver the signals by fiber optics directly to each neighborhood group. With a neighborhood group averaging approximately 500 homes, the resulting System will have improved reliability while delivering a high quality picture.

4.6 Emergency Alert Capability.

Grantee shall immediately provide the System capability to allow Grantor to transmit from the Emergency Operations Center, an emergency alert signal to all participating Subscribers, in the form of an audio message on all Channels simultaneously in the event of disaster or public emergency.

4.7 Parental Control Lock.

Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

4.8 Technical Standards.

Grantee shall, at a minimum, comply at all times with all applicable Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as may be amended from time to time.

4.9 Right of Inspection.

Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of this Agreement and Applicable Laws, to ensure Grantee's compliance and to protect the health, safety and welfare of Grantor's citizens.

4.10 Periodic Evaluation, Review and Modification.

Grantor and Grantee acknowledge and agree that the field of cable television is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Agreement. Therefore, in order to provide for the maximum degree of flexibility in this Agreement and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply:

- A. The City reserves the right to adopt rules and regulations controlling the procedures as set forth below and the subjects for evaluation sessions. In the absence of any City action taken to exercise these rights, Grantee shall be subject to the procedures and the subjects described in this Section 4.10.
- B. The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Agreement; provided, however, there shall not be more than one (1) evaluation session during any five (5) year period.
- C. Topics which may be discussed at any evaluation session include, but are not limited to, rates, channel capacity, the System performance, programming, PEG access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.
- D. During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost such information and documents as the City may request to perform the evaluation.
- E. If at any time during its evaluation, the City determines that reasonable evidence exists of inadequate System performance, the City may require Grantee to perform tests and analyses directed toward such suspected inadequacies at Grantee's expense. Grantee shall fully cooperate with the City in performing such testing and any report prepared by Grantee shall include at least:
 - 1. a description of the problem in the System performance which precipitated the special tests;
 - 2. the System component tested;

3. the equipment used and procedures employed in testing;
 4. the method, if any, by which the System performance problem was resolved; and
 5. any other information pertinent to said tests and analyses which may be required by the City, or determined when the test is performed.
- F. If after receiving Grantee's report, the City determines that reasonable evidence still exists of inadequate System performance, the City may enlist an independent engineer, to perform tests and analyses directed toward such suspected inadequacies.
- G. As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Agreement may be required, that the requirements of the System or this Agreement should be updated, change or revised, and/or that additional services should be provided by Grantee (collectively a "Proposed Modification"). The parties shall thereafter negotiate in good faith.

SECTION 5.

SERVICES AND PROGRAMMING

5.1 Services and Programming.

Grantee shall provide Grantor with a list of programming services and other services offered, which list shall be attached hereto as Exhibit C (the "Services List"). The Services List shall include all applicable charges and pricing schedules. The Services List shall be updated each time a change is made by Grantee. Grantee shall not alter the number of program services or other services without thirty (30) days prior written notification to the Grantor and System Subscribers.

SECTION 6.

SUPPORT FOR LOCAL CABLE USAGE

6.1 Grantee Support for PEG Usage.

Grantee shall provide the following support for PEG access usage within the Service Area:

- A. Provision and use of the grant funds and Channels designated in Exhibit D of this Agreement for local PEG programming and access use at no charge in accordance with the requirements of Exhibit D.
- B. Maintenance of the PEG Access Channels, and support of PEG programming to the extent specified in Exhibit D of this Agreement.
- C. Provision of free public building installation and cable service as more clearly specified in Exhibit D and provision of live cablecasting capability to the locations specified in Exhibit D.

6.2 Compliance with Federal Law.

In entering into this Agreement, the Grantee expressly acknowledges and agrees that the obligations it has undertaken in this Section 6 have been knowingly, voluntarily and intelligently entered into and that such obligations, including the grants and/or payments to be made by Grantee in this Section 6 will not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such obligations shall not be deemed to be (i) “payments in kind” or any involuntary payments chargeable against the Franchise Fees to be paid to the City by Grantee pursuant to Section 3.2 hereof or (ii) part of the Franchise Fees to be paid to the City by Grantee pursuant to Section 3.2 hereof.

SECTION 7.

REGULATION

7.1 Franchise Regulation.

The Franchise granted pursuant to this Agreement shall be subject to regulation by Grantor in accordance with all of the provisions of the Ordinance.

7.2 Force Majeure.

In accordance with Section 20.44 of the Ordinance, in the event Grantee’s performance of any of the terms, conditions, obligations or requirements of this Agreement or the Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond Grantee’s reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual’s property and inability of Grantee to secure all necessary permits to utilize

utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

7.3 Rate Regulation.

Nothing in this Agreement shall in any way prevent Grantor from regulating any rates charged by Grantee. If Grantor elects to so regulate, Grantor shall follow the procedures outlined in Section 20.44 of the Ordinance or Applicable Laws.

7.4 Franchise Costs.

Notwithstanding anything to the contrary contained herein, Grantee expressly reserves the right to pass through as an external cost any and all costs associated with meeting the requirements set forth in this Franchise in accordance with the rules, and regulations of the FCC. Nothing contained herein shall be construed as an agreement to the contrary or a waiver by Grantee of the right to pass such costs through.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the date and year first written above.

CITY OF BLOOMINGTON

DATED: _____

By: _____
Its Mayor

DATED: _____

By: _____
Its Manager

Reviewed and approved by the
City Attorney

City Attorney

PARAGON

DATED: _____

By: _____
Its: _____

EXHIBIT A

OWNERSHIP

Nortel Cable Associates

is owned by Nortel Cable Corporation and Countryside Investments Incorporated
[both wholly owned subsidiaries of TW/KBLCOM Incorporated].

EXHIBIT B

EXHIBIT C

SERVICES OFFERED BY GRANTEE

<u>Service</u>	<u>Description</u>	<u>Rate/ Charge</u>
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EXHIBIT D

GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

- A. Grantee shall make seven (7) video Channels available, two (2) of which will be scrambled exclusively for PEG use (the “PEG Channels” or “PEG Access Channels”). The Grantor agrees to consider giving two (2) scrambled PEG Channels back to the Grantee at such time as the parties enter into an agreement to provide those services on an upgraded Institutional Network. The PEG Channels shall be dedicated for PEG use for the term of the Franchise Agreement, provided that Grantee may, after receiving prior written consent from Grantor, utilize any portions of the PEG Channels not scheduled for PEG use. Grantor and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531). The VHF spectrum must be used for at least one of the specially designated PEG channels.
- B. Grantee shall provide to each of its subscribers who receive all or any part of the Cable Services offered on the System, reception of each public, educational and governmental Access Channel. This obligation shall not be construed to require Grantee to provide PEG Channels to subscribers who only receive data and/or telephony services which may be offered by Grantee.
- C. Grantee shall provide at least one specially designated access channel available for lease on a first come, nondiscriminatory basis by commercial and noncommercial users. This Section is not applicable to Subscribers receiving only alarm system services or only data transmission services for computer operated functions. The VHF spectrum shall be used for at least one of the specially designated noncommercial public Access Channels required.
- D. Whenever any of the Access Channels are in use during 80 percent of the weekdays (Monday-Friday), for 80 percent of the time during any consecutive three hour period for six weeks running, and there is demand for use of an additional channel for the same purpose, Grantee shall then have six months in which to provide a new specially designated access channel for the same purpose at no additional cost to Subscribers.

2. PEG OPERATIONS

Grantor may, in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. Grantor and Grantee may negotiate an agreement for management of PEG facilities, if so desired by both parties.

3. TITLE TO PEG EQUIPMENT

Grantor shall retain title to all PEG equipment and facilities purchased or otherwise acquired with funding made available by Grantee.

4. RELOCATION OF PEG CHANNELS

Grantee shall provide Grantor thirty (30) days notice for any channel realignment affecting PEG Access channels. Grantee shall use its reasonable efforts to provide Grantor with sixty (60) days notice for any channel line up changes involving PEG Channels when possible. Grantee recognizes the Grantor prefers that "The Bloomington Channel," a current PEG Channel, remain on Channel 14. Grantee will use reasonable efforts to continue to offer this channel at its present location. If Grantee must relocate this channel, it will consult with the City in advance, however, the final decision on channel location resides solely with the Grantee.

5. ACCESS OPERATING SUPPORT

In light of the Grantor's past practice of devoting all or substantially all of the franchise fees collected from the Grantee to support local programming, Grantee shall collect 55¢ cents per directly billed subscriber per month and shall remit said amounts collected to the City of Bloomington on a quarterly basis to be used solely to support PEG access ("Access Operating Fund"). The 55¢ cents per directly billed subscriber per month fee may be adjusted by the City, upon ninety (90) days advance written notice to Grantee, no more frequently than every two (2) years during the term of this Franchise. Any adjustments shall be equal to the cumulative increase in the consumer price index (CPI) during the preceding years.

6. SERVICE TO PUBLIC BUILDINGS

- (a) One (1) cable drop connection and the highest level of cable service excluding pay-per-view and pay-per-channel programming shall be provided free of charge to all public schools in the city and each public building listed in Exhibit D-1 with no Installation charges or monthly service charges. Said drop connection and service provision shall be concurrent with the construction schedule required by Section 4.1 of the Agreement. Grantee shall, in any public school or public building hereinafter built, provide all materials, design specifications and technical advice for any one cable outlet to be installed during the construction of such building, without cost to the Grantor and Grantee shall provide the same service to such new school or public building as required in this paragraph (a). All public schools shall have the right to internally redistribute the signal, free-of-charges to other locations within the institution. Grantee shall provide Installation to private schools within 200 feet of plant. A private school is defined as any private secondary school that receives funding pursuant to Title 1 of the

Elementary and Secondary Education Act of 1965. Installation and Cable Service shall be provided free to such private schools through the year 2000.

- (b) Service to public schools and municipally owned buildings constructed or occupied after the effective date of this Franchise shall be similarly provided subject to the building being located within 200 feet of the Grantee's then existing System.
- (c) If facility is over 200 feet from Grantee's then existing System, the school or city shall be responsible for all equipment, construction costs and additional wiring beyond the first 200 feet that are the Grantee's responsibility.
- (d) All internal wiring cost beyond the one outlet that Grantee agrees to provide shall be the responsibility of the school or municipality.
- (e) The financial responsibility for any additional Converters desired by the school or city shall be their responsibility.
- (f) Program origination capability (two-way) shall be provided to the schools and public buildings listed in Exhibit D-2.

EXHIBIT D-1

SERVICE TO PUBLIC BUILDINGS

Public Schools

Hillcrest Elementary School, 9301 Thomas Avenue
Hubert Olson Elementary School, 4501 W. 102nd Street
Indian Mounds Elementary School, 9801 - 11th Avenue S.
Normandale Hills Elementary School, 9501 Toledo Avenue S.
Oak Grove Elementary School, 1301 W. 104th Street
Poplar Bridge Elementary School, 8401 Palmer Avenue
Ridgeview Elementary School, 9400 Nesbitt Road
Valley View Elementary School, 351 E. 88th Street
Washburn Elementary School, 8401 Xerxes Avenue S.
Westwood Elementary School, 3701 W. 108th Street
Oak Grove Intermediate School, 1300 W. 106th Street
BRAVO! Junior High School, 8900 Portland Avenue S.
Hubert Olson Junior High School, 4551 W. 102nd Street
Jefferson High School, 4001 W. 102nd Street
Kennedy High School, 9701 Nicollet Avenue
Bloomington Community Education, 8900 Portland Avenue S.
Normandale Community College, 9700 France Avenue S.
Southwood Early Childhood-Dist. 271, 4901 W. 112th Street
Pond Center-Dist. 271, 9600 Third Avenue S.
District Administration/Transportation Center, 8801 Lyndale Avenue S.

Public Buildings

Bloomington City Hall, 2215 W. Old Shakopee Road
Creskside Community Center, 9801 Penn Avenue S.
Public Health Center, 1900 W. Old Shakopee Road
Bloomington Public Works Maintenance Facility, 9930 Logan Avenue S.
Bloomington Animal Pound, 9920 Logan Avenue S.
Motor Vehicle Licensing Center, 1700 W. 98th Street
Bloomington Public Works Administration, 9750 James Avenue S.
Bloomington Armory, 3300 W. 98th Street
Bloomington Ice Garden, 3600 W. 98th Street
Bloomington Stadium, 8900 Queen Avenue S.
Dwan Golf Course, 3301 W. 110th Street
Hyland Greens Golf Course, 10100 Normandale Boulevard
Hyland Lake Visitors Center, 10145 E. Bush Lake Road
Richardson Nature Center, 8737 E. Bush Lake Road
Recycling and Problem Waste Drop-off Center, 1400 W. 96th Street

Fire Station #1, 10 W. 95th Street
Fire Station #2, 10601 Xerxes Avenue S.
Fire Station #3, 2050 E. 86th Street
Fire Station #4, 4201 W. 84th Street
Fire Station #5, 10540 Bush Lake Road
Fire Station #6, 8601 Lakeview Road
Bloomington Education Center, 8900 Portland Avenue
Oxboro Community Library, 8801 Portland Avenue
Penn Lake Community Library, 8800 Penn Avenue S.
Minnesota Valley National Wildlife Refuge, 3815 E. 80th Street
Bloomington Public Television, 10816 Normandale Boulevard
Bloomington Art Center, 10206 Penn Avenue S.
Galaxy Youth Center, 8900 Portland Avenue S.
Bloomington Water Treatment Plant, 9304 Poplar Bridge Road

EXHIBIT D-2

SCHOOLS AND PUBLIC BUILDINGS TO BE PROVIDED WITH PROGRAM ORINATION CAPABILITY (I.E., TWO-WAY CAPABILITY)

Hillcrest Elementary School, 9301 Thomas Avenue
Hubert Olson Elementary School, 4501 W. 102nd Street
Indian Mounds Elementary School, 9801 - 11th Avenue S.
Normandale Hills Elementary School, 9501 Toledo Avenue S.
Oak Grove Elementary School, 1301 W. 104th Street
Poplar Bridge Elementary School, 8401 Palmer Avenue
Ridgeview Elementary School, 9400 Nesbitt Road
Valley View Elementary School, 351 E. 88th Street
Washburn Elementary School, 8401 Xerxes Avenue S.
Westwood Elementary School, 3701 W. 108th Street
Oak Grove Intermediate School, 1300 W. 106th Street
BRAVO! Junior High School, 8900 Portland Avenue S.
Hubert Olson Junior High School, 4551 W. 102nd Street
Jefferson High School, 4001 W. 102nd Street
Kennedy High School, 9701 Nicollet Avenue
Southwood Early Childhood-Dist. 271, 4901 W. 112th Street
Pond Center-Dist. 271, 9600 Third Avenue S.
District Administration/Transportation Center, 8801 Lyndale Avenue S.
Bloomington Education Center, 8900 Portland Avenue
Bloomington City Hall, 2215 W. Old Shakopee Road
Creskide Community Center, 9801 Penn Avenue S.
Bloomington Armory, 3300 W. 98th Street
Fire Station #1, 10 W. 95th Street
Bloomington Public Television, 10816 Normandale Boulevard
Normandale Community College, 9700 France Avenue S.
Bloomington Stadium, 8900 Queen Avenue S.
Bloomington Ice Garden, 3600 W. 98th Street